

**THE STATE OF TEXAS  
CITATION**

CAUSE NO. CC-22-00604-E  
COUNTY COURT AT LAW NO. 5  
Dallas County, Texas

**TO:**

**BELGER CARTAGE SERVICE, INC.  
C/O REGISTERED AGENT JOHN C SIMS  
1205 BROADWAY  
LUBBOCK TX 79401**

"You have been sued. You may employ an attorney. If you or your Attorney do not file a WRITTEN ANSWER with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and PLAINTIFF'S ORIGINAL PETITION, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org." Your answer should be addressed to the clerk of County Court at Law No. 5 of Dallas County, Texas at the Court House of said County, 600 Commerce Street, Suite 101, Dallas, Texas 75202.

**CARLO MOYA, INDIVIDUALLY AND AS A LEGAL GUARDIAN AND NEXT FRIEND OF A  
MINOR  
*Plaintiff(s)*  
VS.**

**BELGER CARTAGE SERVICE, INC.; DAVID EUGENE ROGERS  
*Defendant(s)***

filed in said Court on the 3rd day of February, 2022, a copy of which accompanies this citation.

**WITNESS: JOHN F. WARREN**, Clerk of the County Courts of Dallas County, Texas. GIVEN UNDER MY HAND AND SEAL OF OFFICE, at Dallas, Texas, and issued this 11th day of February, 2022 A.D.

JOHN F. WARREN, Dallas County Clerk

By   
Terrence Washington, Deputy



**ATTORNEY  
CITATION  
PLAINTIFF'S ORIGINAL PETITION**  
**CC-22-00604-E**

IN THE COUNTY COURT OF DALLAS  
County Court at Law No. 5  
Dallas County, Texas

CARLO MOYA, INDIVIDUALLY AND  
AS A LEGAL GUARDIAN AND NEXT  
FRIEND OF A MINOR, *Plaintiff(s)*

VS.

**BELGER CARTAGE SERVICE, INC.;  
DAVID EUGENE ROGERS,  
*Defendant(s)***

**SERVE:**  
**BELGER CARTAGE SERVICE, INC.  
C/O REGISTERED AGENT  
JOHN C SIMS  
1205 BROADWAY  
LUBBOCK TX 79401**

ISSUED THIS  
11TH DAY OF FEBRUARY, 2022

JOHN F. WARREN, COUNTY CLERK  
BY: TERRENCE WASHINGTON,  
DEPUTY

Attorney for Plaintiff  
**SPENCER P BROWNE  
8222 DOUGLAS AVE  
SUITE 400  
DALLAS TX 75225  
214-526-7900**

**NO OFFICER'S FEES HAVE BEEN  
COLLECTED BY DALLAS COUNTY CLERK**

**OFFICER'S RETURN**

CC-22-00604-E County Court at Law No. 5

CARLO MOYA, INDIVIDUALLY AND AS A LEGAL GUARDIAN AND NEXT FRIEND OF A MINOR vs. BELGER CARTAGE SERVICE, INC., DAVID EUGENE ROGERS

**ADDRESS FOR SERVICE:**

C/O REGISTERED AGENT JOHN C SIMS  
1205 BROADWAY  
LUBBOCK TX 79401

**Fees:**

Came to hand on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_.m., and executed in \_\_\_\_\_ County, Texas by delivering to BELGER CARTAGE SERVICE, INC. in person, a true copy of this Citation together with the accompanying copy of the PLAINTIFF'S ORIGINAL PETITION with the date and service at the following times and places to-wit:

<b>Name</b>	<b>Date/Time</b>	<b>Place, Course and Distance from Courthouse</b>

And not executed as to the defendant(s), \_\_\_\_\_

The diligence used in finding said defendant(s) being:

and the cause or failure to execute this process is:

and the information received as to the whereabouts of said defendant(s) being:

Serving Petition and Copy      \$\_\_\_\_\_ , Officer

Total    \$\_\_\_\_\_ , County, Texas

By: \_\_\_\_\_, Deputy

\_\_\_\_\_, Affiant

**THE STATE OF TEXAS  
CITATION**

CAUSE NO. CC-22-00604-E  
COUNTY COURT AT LAW NO. 5  
Dallas County, Texas

**TO:**

DAVID EUGENE ROGERS  
SERVE THROUGH TEXAS HIGHWAY TRANSPORTATION COMMISSION  
J. BRUCE BUGG, JR., CHAIRMAN  
125 E. 11TH STREET  
AUSTIN, TEXAS 78701  
DAVID EUGENE ROGERS  
119 E 5TH ST  
CLIMAX KS 67137

"You have been sued. You may employ an attorney. If you or your Attorney do not file a WRITTEN ANSWER with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and PLAINTIFF'S ORIGINAL PETITION, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org." Your answer should be addressed to the clerk of County Court at Law No. 5 of Dallas County, Texas at the Court House of said County, 600 Commerce Street, Suite 101, Dallas, Texas 75202.

**CARLO MOYA, INDIVIDUALLY AND AS A LEGAL GUARDIAN AND NEXT FRIEND OF A MINOR**  
*Plaintiff(s)*

**VS.**

**BELGER CARTAGE SERVICE, INC.; DAVID EUGENE ROGERS**  
*Defendant(s)*

filed in said Court on the 3rd day of February, 2022, a copy of which accompanies this citation.

**WITNESS: JOHN F. WARREN**, Clerk of the County Courts of Dallas County, Texas. GIVEN UNDER MY HAND AND SEAL OF OFFICE, at Dallas, Texas, and issued this 28th day of February, 2022 A.D.

JOHN F. WARREN, Dallas County Clerk

By , Deputy  
Lupe Perez



**ATTORNEY**

**CITATION**

**PLAINTIFF'S ORIGINAL PETITION**

**CC-22-00604-E**

IN THE COUNTY COURT OF DALLAS  
County Court at Law No. 5  
Dallas County, Texas

CARLO MOYA, INDIVIDUALLY AND  
AS A LEGAL GUARDIAN AND NEXT  
FRIEND OF A MINOR, *Plaintiff(s)*

**VS.**

BELGER CARTAGE SERVICE, INC.;  
DAVID EUGENE ROGERS,  
*Defendant(s)*

**SERVE:**

DAVID EUGENE ROGERS  
SERVE THROUGH TEXAS HIGHWAY  
TRANSPORTATION COMMISSION  
J. BRUCE BUGG, JR., CHAIRMAN  
125 E. 11TH STREET  
AUSTIN, TEXAS 78701

DAVID EUGENE ROGERS  
119 E 5TH ST  
CLIMAX KS 67137

ISSUED THIS  
28TH DAY OF FEBRUARY, 2022

JOHN F. WARREN, COUNTY CLERK  
BY: LUPE PEREZ, DEPUTY

**Attorney for Plaintiff**

SPENCER P BROWNE  
8222 DOUGLAS AVE  
SUITE 400  
DALLAS TX 75225  
214-526-7900

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### OFFICER'S RETURN

CC-22-00604-E County Court at Law No. 5

CARLO MOYA, INDIVIDUALLY AND AS A LEGAL GUARDIAN AND NEXT FRIEND OF A MINOR vs. BELGER CARTAGE SERVICE, INC., DAVID EUGENE ROGERS

#### ADDRESS FOR SERVICE:

DAVID EUGENE ROGERS  
SERVE THROUGH TEXAS HIGHWAY TRANSPORTATION COMMISSION  
J. BRUCE BUGG, JR., CHAIRMAN  
125 E. 11TH STREET  
AUSTIN, TEXAS 78701

DAVID EUGENE ROGERS  
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#### Fees:

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Serving Petition and Copy      \$ \_\_\_\_\_, Officer

Total    \$ \_\_\_\_\_, County, Texas

By: \_\_\_\_\_, Deputy

\_\_\_\_\_, Affiant

CC-22-00604-E

CAUSE NO. \_\_\_\_\_

CARLO MOYA, INDIVIDUALLY AND  
AS A LEGAL GUARDIAN AND NEXT  
FRIEND OF X.X., A MINOR

v.

BELGER CARTAGE SERVICE, INC.  
AND DAVID EUGENE ROGERS

IN THE COUNTY COURT

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§

§

§

§

§

§

§

AT LAW NO. \_\_\_\_\_

DALLAS COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION**

Plaintiff Carlo Moya, Individually and as a Legal Guardian and Next Friend of X.X., a Minor ("Plaintiff") files this Original Petition complaining of Defendants Belger Cartage Service, Inc. and David Eugene Rogers ("Defendants") and for cause of action states the following:

**DISCOVERY CONTROL PLAN**

1. Pursuant to Rules 190.1 and 190.3 of the Texas Rules of Civil Procedure, Plaintiff states that discovery in this cause is intended to be conducted under Level 3.

**JURY DEMAND**

2. Pursuant to Rules 216 and 217 of the Texas Rules of Civil Procedure, Plaintiff requests a jury trial of this matter. Accordingly, Plaintiff tenders the proper jury fee with the filing of Plaintiff's Original Petition.

**PARTIES**

3. Plaintiff Carlo Moya is an individual residing in Dallas County, Texas. Carlo Moya is a father of X.X., a Minor, and appears herein Individually and as a Legal Guardian and Next Friend of X.X.
4. Defendant David Eugene Rogers is a nonresident. A current search of records indicates

that he resides at 119 E 5<sup>th</sup> St., Climax, KS 67137 and may be served by delivering a copy of the citation directed to Defendant and this petition, by and through his substituted agent for service of process, J. Bruce Bugg, Jr., Chairman, Texas Transportation Commission, 125 E. 11<sup>th</sup> Street, Austin, Texas 78701, pursuant to Tex.Civ. Prac. & Rem. Code § 17.062.

5. Defendant Belger Cartage Service, Inc. is an incorporated entity and may be served through its registered agent John C Sims at 1205 Broadway, Lubbock, TX 79401.

#### **VENUE AND JURISDICTION**

6. Venue is proper in this Court by virtue of Tex. Civ. Prac. & Rem. Code §15.002(a). Furthermore, this Court has jurisdiction in that the damages being sought are within the jurisdictional limits of this Court.

#### **FACTS**

7. This lawsuit is based on a motor vehicular collision occurring on or about May 26, 2021, at or near the intersection of North Stemmons Freeway and Walnut Hill Lane in Dallas, Texas (hereinafter referred to as "The Collision").
8. The Collision was proximately caused by the negligence and / or negligence *per se* of Defendants.

#### **CAUSES OF ACTION**

##### **Negligence, Negligence *Per Se*, and Respondeat Superior**

9. At the time of The Collision, Defendants Belger Cartage Service, Inc. and David Eugene Rogers were negligent and / or negligent *per se* in one or more of the following particulars:
  - a. In failing to keep such a lookout as a person of ordinary prudence would have kept under the same or similar circumstances;
  - b. In failing to timely apply the brakes of her vehicle in order to avoid the collision in

- question;
- c. In driving a vehicle at a rate of speed which was greater than that which an ordinarily prudent person would have driven under the same or similar circumstances;
  - d. In failing to yield the right-of-way;
  - e. In failing to maintain the vehicle under control;
  - f. In following too closely;
  - g. In disregarding traffic signals;
  - h. In failing to take proper evasive action;
  - i. In driving while inattentive;
  - j. In driving while looking at Defendant's cell phone, texting, emailing, or otherwise using a cellular device which diverted Defendant's attention from the road in front of Defendant; and
  - k. In violating Texas Transportation Code Section 545.062 (following distance), 545.351 (maximum speed requirement), and/or 545.4251 (use of portable wireless communication device for electronic messaging).
10. At the time of The Collision, Defendant David Eugene Rogers was acting in the course and scope of his employment with Defendant Belger Cartage Service, Inc. As a result, Defendant Belger Cartage Service, Inc. is legally liable for the acts and omissions of negligence of Defendant David Eugene Rogers under the doctrine of respondeat superior.
11. Defendant Belger Cartage Service, Inc. was negligent in hiring Defendant David Eugene Rogers as a driver and negligent in allowing him to continue driving vehicles for them when they reasonably should have known that it was unsafe to do so. It was also negligent in its training of Defendant David Eugene Rogers and its operation of its company vehicle system. Such negligence, singularity or in combination with others, proximately caused The Collision.
12. Each of the foregoing acts or omissions, singularly or in combination with others, constituted negligence, negligence *per se*, and/or gross negligence, which proximately caused The Collision and Plaintiff's injuries and damages.

### **PERSONAL INJURIES AND DAMAGES**

13. As a result of Defendants' negligent actions, Carlo Moya suffered personal injuries.

Consequently, Carlo Moya seeks recovery of the following damages:

- a. Medical Expenses: Carlo Moya incurred bodily injuries, which were caused by The Collision and Carlo Moya incurred medical expenses for treatment of such injuries. Carlo Moya believes that, in reasonable medical probability such injuries will require the need for future medical care.
- b. Physical Pain: Carlo Moya endured physical pain as a result of the personal injuries sustained in The Collision and reasonably anticipates such pain will continue in the future.
- c. Mental Anguish: Carlo Moya endured mental anguish as a result of the personal injuries sustained in The Collision and reasonably anticipates such mental anguish will continue in the future.
- d. Disfigurement: Carlo Moya endured disfigurement as a result of the personal injuries sustained in The Collision and reasonably anticipates such will continue in the future.
- e. Impairment: Carlo Moya endured physical impairment as a result of the personal injuries sustained in The Collision and reasonably anticipates such in the future.
- f. Loss of Earning Capacity: Carlo Moya lost wages as a result of the personal injuries sustained in The Collision. Carlo Moya reasonably believes that such injuries will diminish Plaintiff's earning capacity in the future.

14. As a result of Defendants' negligent actions, X.X. suffered personal injuries. Consequently,

Carlo Moya, Individually and as a Legal Guardian and Next Friend of X.X. seeks recovery of the following damages:

- a. Medical Expenses: X.X. incurred bodily injuries, which were caused by The Collision and Carlo Moya incurred medical expenses for treatment of such injuries. Carlo Moya believes that, in reasonable medical probability such injuries will require the need for future medical care.
- b. Physical Pain: X.X. endured physical pain as a result of the personal

injuries sustained in The Collision and Carlo Moya, Individually and as a Legal Guardian and Next Friend of X.X. reasonably anticipates such pain will continue in the future.

c. Mental Anguish: X.X. endured mental anguish as a result of the personal injuries sustained in The Collision and Carlo Moya, Individually and as a Legal Guardian and Next Friend of X.X. reasonably anticipates such mental anguish will continue in the future.

d. Disfigurement: X.X. endured disfigurement as a result of the personal injuries sustained in The Collision and reasonably Carlo Moya, Individually and as a Legal Guardian and Next Friend of X.X. anticipates such will continue in the future.

e. Impairment: X.X. endured physical impairment as a result of the personal injuries sustained in The Collision and reasonably Carlo Moya, Individually and as a Legal Guardian and Next Friend of X.X. anticipates such in the future.

### **AGGRAVATION**

15. In the alternative, if it be shown that the Plaintiff suffered from any pre-existing injury, disease and/or condition at the time of the incident made the basis of the lawsuit, then such injury, disease and/or condition was aggravated and/or exacerbated by the negligence of the Defendants.

### **PROPERTY DAMAGE**

16. As a proximate result of the above-detailed conduct on the part of the Defendants, the vehicle Plaintiff was in at the time of the collision was damaged in an amount in excess of the jurisdictional limits of this Court, for which the Defendants are hereby sued and recovery is sought.

### **U.S. LIFE TABLES**

17. Notice is hereby given to the Defendants that Plaintiff intends to use the U. S. Life Tables as published by the Department of Health and Human Services - National Vital Statistics

Report in the trial of this matter. Plaintiff requests that this Honorable Court take judicial notice of those rules, regulations, and statutes of the United States and the State of Texas, pursuant to Texas Rule of Evidence 201 and 1005.

**RELIEF SOUGHT**

18. Pursuant to Texas Rules of Civil Procedure 193.7, notice is hereby given of the intention to use any of the documents exchanged and/or produced between any party during the trial of this case. All conditions precedent to Plaintiff's right to recover the relief sought herein have occurred or have been performed.
19. As required by Rule 47(b), Texas Rules of Civil Procedure, Plaintiff states that the damages sought are in an amount within the jurisdictional limits of this Court. As required by Rule 47(c), Texas Rules of Civil Procedure, Plaintiff states that Plaintiff seeks monetary relief in excess of \$1,000,000. As discovery takes place and testimony is given, Plaintiff will be in a better position to give the maximum amount of damages sought.
20. Plaintiff requests that Defendants be cited to appear and answer, and that this case be tried after which Plaintiff recover:
  - a. Judgment against Defendants for a sum within the jurisdictional limits of this Court for the damages set forth herein;
  - b. Pre-judgment interest at the maximum amount allowed by law;
  - c. Post-judgment interest at the maximum rate allowed by law;
  - d. Costs of suit; and
  - e. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

**REYES | BROWNE | REILLEY**

/s/ Spencer P. Browne \_\_\_\_\_

**Spencer P. Browne**

State Bar No. 24040589

**Hussain Ismail**

State Bar No. 24087782

8222 Douglas Avenue, Suite 400

Dallas, TX 75225

(214) 526-7900

(214) 526-7910 (FAX)

spencer@reyeslaw.com

hussain@reyeslaw.com

**ATTORNEYS FOR PLAINTIFFS**

# REYES | BROWNE | REILLEY

8222 Douglas Avenue, SUITE 400

DALLAS, TEXAS 75225

[www.ReyesLaw.com](http://www.ReyesLaw.com)

214.526.7900 T

877.308.7900 T

214.526.7910 F

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February 11, 2022

DALLAS COUNTY DISTRICT CLERK

**RE: DALLAS COUNTY CLERK**

Dear Clerk:

Please issue a citation for **David Eugene Rogers, by and through J. Bruce Bugg, Jr., Chairman, Texas Transportation Commission, 125 E. 11th Street, Austin, Texas 78701** on Plaintiff's Original Petition filed on 2/3/2022.

Once issued, please **E-SERVE or EMAIL** to [Alliancetexas@hotmail.com](mailto:Alliancetexas@hotmail.com).

Feel free to contact Christian Barragan with any questions.

Thank you for your attention in this matter.

Sincerely,

/s/ Spencer P. Browne

Spencer P. Browne SBN24040589

[spencer@reyeslaw.com](mailto:spencer@reyeslaw.com)

REYES REYES BROWNE REILLEY

8222 Douglas Ave., Ste. 400

Dallas, TX 75225

214-526-7900 / 214-526-7910 (fax)

ATTORNEYS FOR PLAINTIFF



**JUDGE JUAN RENTERIA  
COUNTY COURT AT LAW NO. 5  
GEORGE L ALLEN, SR. COURTS BUILDING  
600 COMMERCE STREET, 5<sup>th</sup> FLOOR  
DALLAS, TEXAS 75202-5792  
214-653-6503**

Chambers of Juan Renteria

February 15, 2022

SPENCER P BROWNE  
8222 DOUGLAS AVE  
SUITE 400  
DALLAS TX 75225

Re: Cause No CC-22-00604-E

Cause Style: CARLO MOYA, INDIVIDUALLY AND AS A LEGAL GUARDIAN AND NEXT FRIEND OF A MINOR vs. BELGER CARTAGE SERVICE, INC., DAVID EUGENE ROGERS

Dear Attorney:

The above case is set for dismissal, pursuant to Rule 165A, Texas Rule of Civil Procedure, on: May 16, 2022 at 9:00 a.m.

If no answer has been filed, or if the answer filed is insufficient as a matter of law to place any of the facts alleged in your petition in issue, you will be expected to have moved for, and to have had heard, a summary judgment or to have proved up a default judgment on or prior to that date. Your failure to have done so will result in the dismissal of the case on the above date.

If an answer has been filed that is sufficient to create a fact issue that prevents disposition of the entire case, or if you have been unable to obtain service of process, you should plan to notify the court to obtain a reset of the dismissal date or a trial setting as appropriate.

In no event will live witnesses be required unless the default prove-up is for an un-liquidated claim. Liquidated claims and attorneys fees may be proved up by affidavit with a form of judgment.

If you should have any questions, please feel free to call us.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Juan Renteria".

Judge Juan Renteria  
County Court at Law No. 5  
Dallas County, Texas

\*IF A JURY DEMAND IS REQUESTED, IT MUST BE MADE IN WRITING AND SUBMITTED WITH \$22.00 FOR THE JURY FEES TO: MR. JOHN WARREN, DALLAS COUNTY CLERK, 600 COMMERCE, #101, DALLAS, TEXAS 75202\*



125 EAST 11TH STREET, AUSTIN, TEXAS 78701-2483 | 512.463.8630 | WWW.TXDOT.GOV

March 3, 2022

David Eugene Rogers  
119 E. 5th St  
Climax, KS 67137

Re: GCD No. 46769  
Cause No. CC-22-00604-E  
Dallas County  
Plaintiff: Carlo Moya, Individually and as a Legal Guardian and Next Friend of X.X., a minor  
Defendant: David Eugene Rogers

Dear Sir/Madam:

In compliance with the Texas long-arm statute, Texas Civil Practice and Remedies Code, Chapter 17, Subchapter D, the Chair of the Texas Transportation Commission was duly served with the enclosed Citation and Plaintiff's Original Petition on March 3, 2022.

This agency's only role in the process is to serve as an out-of-state defendant's agent for service of process. We are unable to answer any questions or respond to correspondence regarding this lawsuit. All questions or concerns should be addressed to the attorney noted below.

General Counsel Division

Enclosures

cc: Spencer P Browne  
Attorney at Law  
8222 Douglas Avenue, Suite 400  
Dallas, TX 75225  
Telephone (214) 526 7900

U.S. Certified Mail No. 7021 0950 0000 6152 1344  
Return Receipt Requested

### OFFICER'S RETURN

CC-22-00604-E County Court at Law No. 5

CARLO MOYA, INDIVIDUALLY AND AS A LEGAL GUARDIAN AND NEXT FRIEND OF A MINOR vs. BELGER CARTAGE SERVICE, INC., DAVID EUGENE ROGERS

#### ADDRESS FOR SERVICE:

DAVID EUGENE ROGERS  
SERVE THROUGH TEXAS HIGHWAY TRANSPORTATION COMMISSION  
J. BRUCE BUGG, JR., CHAIRMAN  
125 E. 11TH STREET  
AUSTIN, TEXAS 78701

DAVID EUGENE ROGERS  
119 E STN ST  
CLIMAX KS 67137

#### Fees:

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Serving Petition and Copy \$ \_\_\_\_\_ Officer

Total \$ \_\_\_\_\_ County, Texas

By: \_\_\_\_\_ Deputy

Affiant

THE STATE OF TEXAS  
CITIGATION  
CAUSE NO. CC-22-00604-E  
COUNTY COURT AT LAW NO. 5  
Dallas County, Texas

TO:

DAVID EUGENE ROGERS  
SERVE THROUGH TEXAS HIGHWAY TRANSPORTATION COMMISSION  
J. BRUCE BUGG, JR., CHAIRMAN  
125 E. 11<sup>TH</sup> STREET  
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CARLO MOYA, INDIVIDUALLY AND AS A LEGAL GUARDIAN AND NEXT FRIEND OF A MINOR  
*Plaintiff(s)*

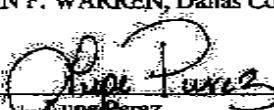
VS.

BELGER CARTAGE SERVICE, INC.; DAVID EUGENE ROGERS  
*Defendant(s)*

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WITNESS: JOHN F. WARREN, Clerk of the County Courts of Dallas County, Texas. GIVEN UNDER MY  
HAND AND SEAL OF OFFICE, at Dallas, Texas, and issued this 28th day of February, 2022 A.D.

JOHN F. WARREN, Dallas County Clerk

By  Deputy  
Lupe Perez



RECEIVED

MAR 03 2022

GENERAL COUNSEL

ATTORNEY
CITATION
PLAINTIFF'S ORIGINAL PETITION
CC-22-00604-E
IN THE COUNTY COURT OF DALLAS County Court at Law No. 5 Dallas County, Texas
CARLO MOYA, INDIVIDUALLY AND AS A LEGAL GUARDIAN AND NEXT FRIEND OF A MINOR, <i>Plaintiff(s)</i>
VS.
BELGER CARTAGE SERVICE, INC.; DAVID EUGENE ROGERS, <i>Defendant(s)</i>
SERVE:
DAVID EUGENE ROGERS SERVE THROUGH TEXAS HIGHWAY TRANSPORTATION COMMISSION J. BRUCE BUGG, JR., CHAIRMAN 125 E. 11TH STREET AUSTIN, TEXAS 78701
DAVID EUGENE ROGERS 119 E 5TH ST CLIMAX KS 67137
ISSUED THIS 28TH DAY OF FEBRUARY, 2022
JOHN F. WARREN, COUNTY CLERK BY: LUPE PEREZ, DEPUTY
Attorney for Plaintiff SPENCER P BROWNE 8222 DOUGLAS AVE SUITE 400 DALLAS TX 75225 214-526-7900

NO OFFICER'S FEES HAVE BEEN  
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CC-22-00604-E

**CAUSE NO.**

CARLO MOYA, INDIVIDUALLY AND  
AS A LEGAL GUARDIAN AND NEXT  
FRIEND OF X.X., A MINOR

v.

BELGER CARTAGE SERVICE, INC.  
AND DAVID EUGENE ROGERS

**IN THE COUNTY COURT**

AT LAW NO.

## DALLAS COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION**

Plaintiff Carlo Moya, Individually and as a Legal Guardian and Next Friend of X.X., a Minor ("Plaintiff") files this Original Petition complaining of Defendants Belger Cartage Service, Inc. and David Eugene Rogers ("Defendants") and for cause of action states the following:

## DISCOVERY CONTROL PLAN

1. Pursuant to Rules 190.1 and 190.3 of the Texas Rules of Civil Procedure, Plaintiff states  
that discovery in this cause is intended to be conducted under Level 3.

**JURY DEMAND**

2. Pursuant to Rules 216 and 217 of the Texas Rules of Civil Procedure, Plaintiff requests a jury trial of this matter. Accordingly, Plaintiff tenders the proper jury fee with the filing of Plaintiff's Original Petition.

## PARTIES

3. Plaintiff Carlo Moya is an individual residing in Dallas County, Texas. Carlo Moya is a father of X.X., a Minor, and appears herein Individually and as a Legal Guardian and Next Friend of X.X.
  4. Defendant David Eugene Rogers is a nonresident. A current search of records indicates

that he resides at 119 E 5<sup>th</sup> St., Climax, KS 67137 and may be served by delivering a copy of the citation directed to Defendant and this petition, by and through his substituted agent for service of process, J. Bruce Bugg, Jr., Chairman, Texas Transportation Commission, 125 E. 11<sup>th</sup> Street, Austin, Texas 78701, pursuant to Tex.Civ. Prac. & Rem. Code § 17.062.

5. Defendant Belger Cartage Service, Inc. is an incorporated entity and may be served through its registered agent John C Sims at 1205 Broadway, Lubbock, TX 79401.

#### VENUE AND JURISDICTION

6. Venue is proper in this Court by virtue of Tex. Civ. Prac. & Rem. Code §15.002(a). Furthermore, this Court has jurisdiction in that the damages being sought are within the jurisdictional limits of this Court.

#### FACTS

7. This lawsuit is based on a motor vehicular collision occurring on or about May 26, 2021, at or near the intersection of North Stemmons Freeway and Walnut Hill Lane in Dallas, Texas (hereinafter referred to as "The Collision").
8. The Collision was proximately caused by the negligence and / or negligence *per se* of Defendants.

#### CAUSES OF ACTION

##### **Negligence, Negligence *Per Se*, and Respondeat Superior**

9. At the time of The Collision, Defendants Belger Cartage Service, Inc. and David Eugene Rogers were negligent and / or negligent *per se* in one or more of the following particulars:
  - a. In failing to keep such a lookout as a person of ordinary prudence would have kept under the same or similar circumstances;
  - b. In failing to timely apply the brakes of her vehicle in order to avoid the collision in

- question;
- c. In driving a vehicle at a rate of speed which was greater than that which an ordinarily prudent person would have driven under the same or similar circumstances;
  - d. In failing to yield the right-of-way;
  - e. In failing to maintain the vehicle under control;
  - f. In following too closely;
  - g. In disregarding traffic signals;
  - h. In failing to take proper evasive action;
  - i. In driving while inattentive;
  - j. In driving while looking at Defendant's cell phone, texting, emailing, or otherwise using a cellular device which diverted Defendant's attention from the road in front of Defendant; and
  - k. In violating Texas Transportation Code Section 545.062 (following distance), 545.351 (maximum speed requirement), and/or 545.4251 (use of portable wireless communication device for electronic messaging).
10. At the time of The Collision, Defendant David Eugene Rogers was acting in the course and scope of his employment with Defendant Belger Cartage Service, Inc. As a result, Defendant Belger Cartage Service, Inc. is legally liable for the acts and omissions of negligence of Defendant David Eugene Rogers under the doctrine of respondeat superior.
11. Defendant Belger Cartage Service, Inc. was negligent in hiring Defendant David Eugene Rogers as a driver and negligent in allowing him to continue driving vehicles for them when they reasonably should have known that it was unsafe to do so. It was also negligent in its training of Defendant David Eugene Rogers and its operation of its company vehicle system. Such negligence, singularity or in combination with others, proximately caused The Collision.
12. Each of the foregoing acts or omissions, singularly or in combination with others, constituted negligence, negligence *per se*, and/or gross negligence, which proximately caused The Collision and Plaintiff's injuries and damages.

### PERSONAL INJURIES AND DAMAGES

13. As a result of Defendants' negligent actions, Carlo Moya suffered personal injuries. Consequently, Carlo Moya seeks recovery of the following damages:
- a. Medical Expenses: Carlo Moya incurred bodily injuries, which were caused by The Collision and Carlo Moya incurred medical expenses for treatment of such injuries. Carlo Moya believes that, in reasonable medical probability such injuries will require the need for future medical care.
  - b. Physical Pain: Carlo Moya endured physical pain as a result of the personal injuries sustained in The Collision and reasonably anticipates such pain will continue in the future.
  - c. Mental Anguish: Carlo Moya endured mental anguish as a result of the personal injuries sustained in The Collision and reasonably anticipates such mental anguish will continue in the future.
  - d. Disfigurement: Carlo Moya endured disfigurement as a result of the personal injuries sustained in The Collision and reasonably anticipates such will continue in the future.
  - e. Impairment: Carlo Moya endured physical impairment as a result of the personal injuries sustained in The Collision and reasonably anticipates such in the future.
  - f. Loss of Earning Capacity: Carlo Moya lost wages as a result of the personal injuries sustained in The Collision. Carlo Moya reasonably believes that such injuries will diminish Plaintiff's earning capacity in the future.
14. As a result of Defendants' negligent actions, X.X. suffered personal injuries. Consequently, Carlo Moya, Individually and as a Legal Guardian and Next Friend of X.X. seeks recovery of the following damages:
- a. Medical Expenses: X.X. incurred bodily injuries, which were caused by The Collision and Carlo Moya incurred medical expenses for treatment of such injuries. Carlo Moya believes that, in reasonable medical probability such injuries will require the need for future medical care.
  - b. Physical Pain: X.X. endured physical pain as a result of the personal

injuries sustained in The Collision and Carlo Moya, Individually and as a Legal Guardian and Next Friend of X.X. reasonably anticipates such pain will continue in the future.

c. Mental Anguish: X.X. endured mental anguish as a result of the personal injuries sustained in The Collision and Carlo Moya, Individually and as a Legal Guardian and Next Friend of X.X. reasonably anticipates such mental anguish will continue in the future.

d. Disfigurement: X.X. endured disfigurement as a result of the personal injuries sustained in The Collision and reasonably Carlo Moya, Individually and as a Legal Guardian and Next Friend of X.X. anticipates such will continue in the future.

e. Impairment: X.X. endured physical impairment as a result of the personal injuries sustained in The Collision and reasonably Carlo Moya, Individually and as a Legal Guardian and Next Friend of X.X. anticipates such in the future.

#### AGGRAVATION

15. In the alternative, if it be shown that the Plaintiff suffered from any pre-existing injury, disease and/or condition at the time of the incident made the basis of the lawsuit, then such injury, disease and/or condition was aggravated and/or exacerbated by the negligence of the Defendants.

#### PROPERTY DAMAGE

16. As a proximate result of the above-detailed conduct on the part of the Defendants, the vehicle Plaintiff was in at the time of the collision was damaged in an amount in excess of the jurisdictional limits of this Court, for which the Defendants are hereby sued and recovery is sought.

#### U.S. LIFE TABLES

17. Notice is hereby given to the Defendants that Plaintiff intends to use the U. S. Life Tables as published by the Department of Health and Human Services - National Vital Statistics

Report in the trial of this matter. Plaintiff requests that this Honorable Court take judicial notice of those rules, regulations, and statutes of the United States and the State of Texas, pursuant to Texas Rule of Evidence 201 and 1005.

**RELIEF SOUGHT**

18. Pursuant to Texas Rules of Civil Procedure 193.7, notice is hereby given of the intention to use any of the documents exchanged and/or produced between any party during the trial of this case. All conditions precedent to Plaintiff's right to recover the relief sought herein have occurred or have been performed.
19. As required by Rule 47(b), Texas Rules of Civil Procedure, Plaintiff states that the damages sought are in an amount within the jurisdictional limits of this Court. As required by Rule 47(c), Texas Rules of Civil Procedure, Plaintiff states that Plaintiff seeks monetary relief in excess of \$1,000,000. As discovery takes place and testimony is given, Plaintiff will be in a better position to give the maximum amount of damages sought.
20. Plaintiff requests that Defendants be cited to appear and answer, and that this case be tried after which Plaintiff recover:
  - a. Judgment against Defendants for a sum within the jurisdictional limits of this Court for the damages set forth herein;
  - b. Pre-judgment interest at the maximum amount allowed by law;
  - c. Post-judgment interest at the maximum rate allowed by law;
  - d. Costs of suit; and
  - e. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

**REYES | BROWNE | REILLEY**

/s/ Spencer P. Browne  
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**ATTORNEYS FOR PLAINTIFFS**